

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHRISTOPHER JOLLY,)	
)	Case No. 1:01-CR-00501-AA
Petitioner,)	
)	
v.)	JUDGE ANN ALDRICH
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	<u>MEMORANDUM & ORDER</u>
)	
)	

Before this court is petitioner Christopher Jolly's Writ of Audita Querela [Doc. No. 40] filed pursuant to 28 U.S.C. § 1651 (hereafter "Audita Querela Writ"). For the following reasons, the Audita Querela Writ is dismissed.

I. Background

On October 30, 2001, Jolly was indicted on the following four counts: (1) and (2) possession with intent to distribute cocaine base (crack cocaine), in violation of 21 U.S.C. § 841(a)(1); (3) Possession of a firearm in connection with a drug trafficking offense, in violation of 18 U.S.C. § 924 (c)(1); and (4) possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922 (g)(1) and § 924 (a)(2) [Doc. No. 5]. Subsequently, on June 14, 2002, pursuant to a written Rule 11 plea agreement, Jolly pled guilty to Counts 1 and 4 of the indictment. The plea agreement contained a provision waiving his appeal rights, which included rights conferred under 28 U.S.C. § 2255. Jolly was sentenced to 120 months of imprisonment, followed by eight years of supervised release. He did not appeal.

On July 11, 2003, Jolly filed a pro se motion to vacate, set, aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [Case No. 1:03CV1355, Doc. No. 1]. On September 2, 2003, he filed another motion asserting virtually identical grounds for relief [Case No. 1:03CV1832, Doc. No. 1]. The court considered the two motions together because both were substantively the same. The motion was denied on January 26, 2004 [Case No. 1:03CV1832, Doc. No. 6].

On September 28, 2007, Jolly filed an Audita Querela Writ requesting that this court review his claims and his conduct in a fact finding hearing. As grounds for relief, Jolly asserts that Drug Enforcement Agency Agent Lee Lucas may have engaged in improper conduct to obtain his drug conviction.¹ Lucas' conduct and credibility was called into serious question when he was implicated in the wrongful imprisonment of fifteen individuals who were released in January 2008.

II. Law and Analysis

A number of district courts within the Sixth Circuit have held that “[i]n the criminal context . . . a writ of *audita querela* may not be used to challenge a conviction when other remedies exist, such as a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.” *Evan v. United States*, 3:05-cv-112, 3:95-cr-157, 2005 U.S. Dist. LEXIS 42254, at *8 (E.D. Tenn. March 8, 2005); *see also Dillard v. United States*, No. 1:99 CR 249, 2008 WL 4449083, at *2 (N.D. Ohio Sep. 23, 2008).

Despite labeling it an Audita Querela Writ, Jolly's motion is a collateral attack on his conviction and sentence that must be pursued under 28 U.S.C. § 2255. *See Dillard*, 2008 WL 4449083, at *8. This is Jolly's second action challenging the validity of his convictions and sentences; therefore, he must first obtain permission from the Sixth Circuit before attempting to file

¹Judge Gwin is currently considering a motion for a new trial filed on February 22, 2008, based on similar allegations against Lucas.

in district court. *See Halliburton v. United States*, 59 F. App'x. 55, 56 (6th Cir. 2003) (citing, *inter alia*, 28 U.S.C. § 2244(b)(3)(A) and § 2255(h)). Jolly has not yet obtained such authorization; thus, this court lacks jurisdiction to adjudicate the claim.

III. Conclusion

Because this is Jolly's second attempt to collaterally attack his conviction and sentence and he has not yet received authorization from the Sixth Circuit to file such a § 2255 claim, the district court lacks subject matter jurisdiction to adjudicate this matter. Therefore, the Audita Querela Writ is hereby dismissed and Jolly is instructed to file a motion pursuant to 28 U.S.C. § 2255 after first obtaining permission from the Sixth Circuit.

IT IS SO ORDERED.

s/Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: December 17, 2009